

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

STEPHANIE M. SCHROEDER,

Plaintiff,

vs.

BANK OF AMERICA, LLC, also
known as FIA CARD SERVICES NA,

Defendant.

CV 12-132-M-DLC-JCL

ORDER

On March 4, 2013, the undersigned entered Findings and Recommendations upon the Defendant's Fed. R. Civ. P. 12(b)(6) motion. It was recommended that the motion be granted with respect to the Plaintiff's claim under the Montana Consumer Protection Act and the Fair Credit Reporting Act, 15 U.S.C. § 1681s-2(a), but denied with respect to the Plaintiff's claim under 15 U.S.C. § 1681s-2(b). Neither party filed objections within the 14 day period prescribed by 28 U.S.C. § 636(b)(1)(C) and Fed. R. Civ. P. 72(b)(2). As of the date of this Order, the

presiding district judge, Chief Judge Dana L. Christensen, has not accepted, rejected, or modified the referenced Findings and Recommendation.

On April 25, 2013, the Plaintiff – appearing pro se – filed a document titled “Paintiff’s Request for Clerk’s Default” together with a declaration by the Plaintiff requesting the Clerk to enter the default of the Defendant. Citing to Fed. R. Civ. P. 12(a)(4)(A), the Plaintiff argues that having failed to object to the referenced Findings and Recommendation, the Defendant was required to file an answer within 14 days after the period to object had expired.¹

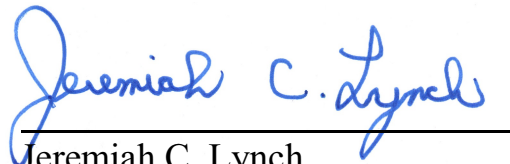
A magistrate judge’s recommendation on a dispositive motion does not become an order of the court until the presiding judge takes some action on the recommendation. This is so, notwithstanding the fact a party does not file any objections to a recommended disposition, thereby waiving a party’s right to de novo review. 28 U.S.C. § 636(b)(1). The district judge must nonetheless review a magistrate judge’s findings and recommendations for clear error. *See McDonnell Douglas Corp. v. Commodore Business Machines, Inc.*, 656 F.2d 1309, 1313 (9th Cir. 1981). Because the requisite review has not occurred as of yet, the

¹It is noted that in response to the Plaintiff’s request for the entry of default, the Defendant immediately filed an answer and a brief objecting to the Plaintiff’s request.

Defendant's motion to dismiss has not been denied and thus Rule 12(a)(1)(4)(A) requiring the Defendant to file an answer was not triggered. Therefore,

IT IS HEREBY ORDERED that the Plaintiff's request for the entry of default is DENIED.

DATED this 29th day of April, 2013



Jeremiah C. Lynch
United States Magistrate Judge